

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSHUA DWANE BACON

|Removed from Court of Common Pleas of

Plaintiff, pro se,

|Luzerne County, Civil Action #2023-03307

FILED
SCRANTON

NOV 03 2023

|JUDGE MARIANI

vs.
LUZERNE COUNTY, et al

|NO. 3:23-CV-01699-RDM-CA

PER

AMO
DEPUTY CLERK

Defendants,

Represented by

|Filed via US Mail on October 29, 2023

Sean P. McDonough, Esq

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S
COMPLAINT PURSUANT TO F.R.C.P. 12(B)(6) FOR FAILURE TO STATE A CLAIM**

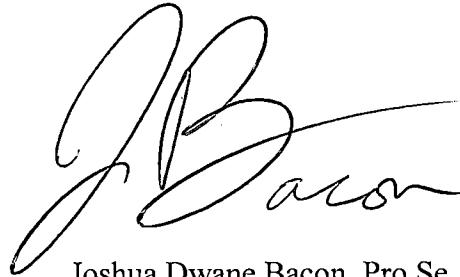
AND NOW, comes the plaintiff, Joshua Dwane Bacon, acting pro se, in opposition to this motion to dismiss this suit. It is the plaintiff's firm belief that he has stated a strong claim supporting the violation of his Eighth and Fourteenth Amendment Constitutional Rights. Plaintiff now avers the following:

- 1) The Luzerne County Department of Corrections is legally required to provide care, custody, and control of all inmates physically housed in its facility. As the plaintiff was not sentenced to any term of imprisonment or found guilty of any crime at the time of these occurrences, the plaintiff maintained all of his inherent legal rights as a legal United States Citizen.
- 2) The Luzerne County Department of Corrections committed actions that were in violation of Article I § 1, 13, & 26 of the Pennsylvania Constitution and Article V § 14 of the United States Constitution.
- 3) Plaintiff has shared sufficient evidence to support his claim that he has a diagnosis of Autism

Spectrum Disorder, and has included exhibits in his initial filing from Dr. Richard Fischbein, a well-respected mental health expert in Kingston, Pennsylvania, and Ms. Ashley Gross, a respected forensic psychologist. The Pennsylvania Department of Corrections has also evaluated the Plaintiff and agrees to his diagnosis of Autism Spectrum Disorder, as well as several other comorbid disorders. Plaintiff has already submitted these exhibits in the initial filing, and does not currently possess any physical copies of these exhibits within his prison cell. If necessary, these documents can be obtained from their original sources, but it may take longer than the provided twenty one day time frame. However, this should be unnecessary as these exhibits are already on the record.

WHEREFORE, the Plaintiff prays that the Defendants' Motion to Dismiss be denied in its entirety, and that Plaintiff's suit be permitted to proceed.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "J. Bacon".

Joshua Dwane Bacon, Pro Se

QN6521 SCI-Chester

500 E. 4th St

Chester, PA 19013

CERTIFICATE OF SERVICE

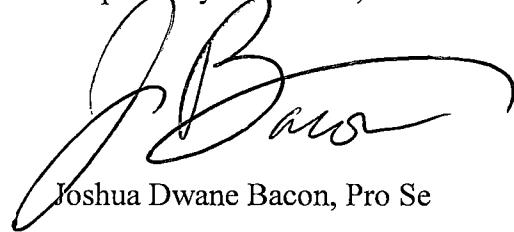
I, Joshua Dwane Bacon, pro se plaintiff, hereby certify that on the 29th of October, 2023, I served the foregoing, PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO F.R.C.P. 12(B)(6) FOR FAILURE TO STATE A CLAIM, upon the persons indicated through their counsel as follows:

Via US First Class Mail, Postage Prepaid

Dougherty, Levanthal, and Price, LLP
Attorney Sean P. McDonough, Esq.
PA ID #47428
75 Glenaura National Boulevard
Moosic, PA 18507

United States District Court for the
Middle District of Pennsylvania
U.S. Post Office and Courthouse
Scranton, PA 18503

Respectfully Submitted,



Joshua Dwane Bacon, Pro Se

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SCI-C115

Name Bacon

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SCRANTON
NOV 03 2023

PER CJ
DEPUTY CLERK

